HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 4249/01 (M/S)
(Old No. 14952/1987)

Smt. Kishori Dhasmana

Vs.

IIIrd A.D.J. Nainital and others

Approved for reporting

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~~Not Approved for Reporting~~

Date of decision 13.08.04

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 4249 of 2001 (MS)
(Old No. 14952/1987)

Smt. Kishori Dhasmana ..... Petitioner

Versus

3rd Additional District Judge, Nainital &
others ..... Respondents

Dated:- 13.8.2004

Hon. Rajesh Tandon J.

Heard the learned counsel for the parties.

By the present writ petition the petitioner has prayed for a writ of certiorari quashing the order dated 29.10.1995 passed by the 3rd Additional District Judge, Nainital.

Briefly stated the facts giving rise to the present writ petition are that petitioner was running an educational cum vocational institution for knitting and sewing in the disputed premises No. 197/2 situated in Tallital, Nainital. She shifted in the disputed premises in November 1984. The petitioner has submitted that she is in possession over the disputed building with the written consent of the landlady for the last three years.

The petitioner has submitted that she as well as the landlady were ignorant of the fact that on 5-7-1982 one Mahendra Singh Bisht had moved an application for allotment of the disputed premises. The petitioner has submitted that no notices were served either to the landlady or to the petitioner as a result of which neither of them could filed their objection

before the Rent control Officer and the building was allotted to Mr. Mahendra Singh Bisht vide order dated 21.9.1982. Against the order of allotment one Sri Prem Chandra Tiwari went in revision but the same was dismissed by the District Judge. The petitioner along with some other persons moved the application for allotment.

The petitioner has submitted that the requirement of the petitioner has not at all considered when in point of fact she was already in possession of the building and was running an institute there. Aggrieved by the impugned order the petitioner went in revision of the Court of 3rd Additional District Judge, Nainital, who dismissed the revision.

The learned counsel for the petitioner has submitted that she is entitled for allotment of the house as she was already in possession. It was submitted that the petitioner was entitled to be heard during the allotment proceedings.

The counsel for the petitioner has submitted that the revisional Court has come to the conclusion that the building in question was previously allotted to a Government servant and according to Rule 11 (2) (a) of Act No. 13 of 1972 a building vacated by a Government servant shall as far as possible be given to his successor in-office or to any other Government servant belonging to the same department but there is no evidence to prove that the building in question was previously allotted to a Government servant of the same department.

The counsel for the petitioner has also argued that the petitioner has also got nomination from the landlady in her favour and as such the premises in question should be allotted to her. Although nomination under section 17 does not give any

absolute right to the petitioner but it should be considered by the revisional Court while deciding the revision.

In view of above, the case is remanded to the revisional Court for deciding it afresh in the light of the observations made above and in accordance with law. Consequently, the writ petition is disposed of. No order as to costs.

(Rajesh Tandon J.)

13.8.2004

Dhyani